

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

BLAIR CHRISTOPHER HANLOH,

Petitioner,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

Case No. SACV 17-00113-JLS (DFM)

ORDER TO SHOW CAUSE

BLAIR CHRISTOPHER HANLOH,

Petitioner,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

Case No. SACV 17-00114-JLS (DFM)

BLAIR CHRISTOPHER HANLOH,

Plaintiff,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

Case No. SACV 17-00116-JLS (DFM)

I.

BACKGROUND

On January 23, 2017, Blair Christopher Hanloh (“Petitioner”) filed three petitions for writ of habeas corpus in this Court.¹ In the first petition, case number SACV 17-00113-JLS (DFM) (“113 Petition”), Petitioner challenges his August 2012 convictions, following a jury trial in Orange County Superior Court, for five counts of recording a false instrument. See People v. Hanloh, Nos. G049417, G049525, 2015 WL 2265697 (Cal. App. May 13, 2015); People v. Hanloh, No. G049417, 2016 WL 1166382 (Cal. App. Mar. 24, 2016); see also Orange Cty. Superior Ct. Case Access, https://ocapps.occourts.org/Vision_PublicNS/ (search for case no. 10CF1450). Petitioner received a four-year prison sentence for those convictions. 113 Petition at 1; see also People v. Hanloh, No. G049417, 2016 WL 1166382 (Cal. App. Mar. 24, 2016).

In the second petition, case number SACV 17-00114-JLS (DFM) (“114 Petition”), Petitioner challenges his July 2016 convictions by guilty plea in Orange County Superior Court for attempting to file false documents, perjury, and other crimes. See 114 Petition at 1; see also Superior Ct. Cnty. Orange Case Access, https://ocapps.occourts.org/Vision_PublicNS/ (search for case no. 14CF3945). Petitioner apparently received a four-year sentence for those convictions. See Orange Cty. Superior Ct. Case Access, https://ocapps.occourts.org/Vision_PublicNS/ (search for case no. 14CF3945).

Finally, in the third petition, case number SACV 17-00116-JLS (DFM) (“116 Petition”), Petitioner challenges his June 2016 conviction by nolo contendere plea in Los Angeles County Superior Court for two counts of perjury. 116 Petition at 1; see also L.A. Superior Ct. Case Access,

¹ All citations to the petitions use the pagination provided by CM/ECF.

1 <http://www.lacourt.org/criminalcasesummary/ui/> (search for case no.
 2 BA442610). He apparently received a one-year jail sentence and five years of
 3 formal probation for those convictions. 116 Petition at 1; see also Superior Ct.
 4 Cnty. Orange Case Access, [https://ocapps.occourts.org/ Vision_PublicNS/](https://ocapps.occourts.org/Vision_PublicNS/)
 5 (search for case no. BA442610).²

6 For the reasons discussed below, Petitioner is ORDERED TO SHOW
 7 CAUSE why his petitions should not be dismissed because the Court lacks
 8 jurisdiction over them and/or because they fail to raise a nonfrivolous claim.

9 II.

10 DISCUSSION

11 A. Jurisdiction

12 “The federal habeas statute gives United States district courts jurisdiction
 13 to entertain petitions for habeas relief only from persons who are ‘in custody in
 14 violation of the Constitution or laws or treaties of the United States.’” Maleng
 15 v. Cook, 490 U.S. 488, 490 (1989) (per curiam) (citation omitted, emphasis in
 16 _____)

17 ² Petitioner filed two previous state habeas petitions in this Court. The
 18 first petition, in case number SACV 15-01540-JLS (DFM), was dismissed
 19 without prejudice because it challenged an ongoing state criminal proceeding
 20 and was unexhausted. See Blair Christopher Hanloh v. Sandra Hutchens, No.
 21 15-01540 (C.D. Cal. Dec. 21, 2015), Dkt. 4 (report and recommendation); id.
 22 (C.D. Cal. Mar. 7, 2016), Dkts. 9 & 10 (order accepting and judgment). The
 23 second petition, in case number SACV 15-01681, was dismissed with leave to
 24 amend because it failed to raise a federal constitutional claim and was
 25 unexhausted. Blair Christopher Hanloh v. Sandra Hutchens, No. 15-01681
 26 (C.D. Cal. Dec. 21, 2015), Dkt. 3 (order dismissing petition with leave to
 27 amend). After Petitioner failed to file an amended petition, the Court
 28 dismissed the petition without prejudice for failure to prosecute. Id. (C.D. Cal.
 Feb. 16, 2016), Dkt. 6 (report and recommendation); Id. (C.D. Cal. June 10,
 2016), Dkts. 7 & 8 (order accepting and judgment). Petitioner incorrectly
 states that his petitions in SACV 15-1540-JLS (DFM) and SACV 15-01681-JLS
 (DFM) were dismissed “with leave to am[]end within 1-year.” 113 Petition at
 13; 114 Petition at 13.

original); see also 28 U.S.C. § 2254(a) (“[A] district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.”). The “in custody” requirement is jurisdictional, and it requires that the petitioner be in custody at the time the petition is filed. Bailey v. Hill, 599 F.3d 976, 978-79 (9th Cir. 2010); see also Cook, 490 U.S. at 490-91 (“We have interpreted the statutory language as requiring that the habeas petitioner be ‘in custody’ under the conviction or sentence under attack at the time his petition is filed.”).

Here, it appears that Petitioner was no longer in jail or prison on January 23, 2017, when his petitions were filed. Petitioner lists a nonprison address of record, and as to each of his challenged convictions, he states that he has served his sentence and has been released from custody. 113 Petition at 1; 114 Petition at 1; 116 Petition at 1. Based on publicly available case information, it appears that Petitioner may have been serving a probation term as to the convictions challenged in one of his petitions, SACV 17-00116-JLS (DFM). See Superior Ct. Cnty. Orange Case Access, https://ocapps.occourts.org/Vision_PublicNS/ (search for case no. BA442610). A probation term is sufficient to satisfy the “in custody” jurisdictional requirement. Fowler v. Sacramento Cty. Sheriff’s Dep’t, 421 F.3d 1027, 1033 n.5 (9th Cir. 2005). But Petitioner fails to explain in the petition whether he in fact received a probation term or when it expired or is set to expire.

As to the Petitioner’s other two petitions, however, nothing indicates that he received a probation or parole term for the challenged convictions. As such, it appears that the Court lacks jurisdiction over those two petitions—SACV 17-00113-JLS (DFM) and SACV 17-00113-JLS (DFM)—because Petitioner was not “in custody” for the purposes of § 2254 at the time they

1 were filed.

2 **B. Frivolousness**

3 Rule 4 of the Rules Governing § 2254 Cases in U.S. District Courts
 4 states that a district judge “must dismiss” a petition “[i]f it plainly appears from
 5 the petition and any attached exhibits that the petitioner is not entitled to
 6 relief.” Summary dismissal is appropriate when the claims in the petition are
 7 vague or conclusory, palpably incredible, or “patently frivolous or false.”
 8 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (citing Blackledge v.
 9 Allison, 431 U.S. 63, 76 (1977)).

10 Here, three of the four claims raised in the petitions are premised solely
 11 on the Uniform Commercial Code (“UCC”). First, Petitioner argues in all
 12 three petitions that California did not have jurisdiction to prosecute him
 13 because in 2009, he

14 recorded upon his CA Drivers License ... ALL RIGHTS
 15 RESERVED WITHOUT PREJUDICE PER UCC 1-308.³ This
 16 valid reservation of rights requires an injured party to prosecute me
 17 for any Commercial crimes within the State of California. My
 18 Reservation of Rights is my remedy in the code and it precluded the
 19 State of California from having jurisdiction at anytime when an
 20 injured party did not exist.

21 113 Petition at 5; 114 Petition at 5; accord 116 Petition at 8 (raising same claim
 22 with different wording). Second, Petitioner contends in all three petitions that:

23 The only jurisdiction in the US and state is under law, equity and

24
 25 ³ U.C.C. § 1-308 provides that “[a] party that with explicit reservation of
 26 rights performs or promises performance or assents to performance in a
 27 manner demanded or offered by the other party does not thereby prejudice the
 28 rights reserved. Such words as ‘without prejudice,’ ‘under protest,’ or the like
 are sufficient.”

1 admiralty under Article 3. The Federal corporation grants to the
 2 states a colorable jurisdiction known as the Uniform Commercial
 3 Code (UCC) and at UCC 1-308 it expressly grants me my remedy
 4 for any legal process under commercial law in the US. The State of
 5 California used the UCC (code) against me and ignored and
 6 refused, and continues to harm me by its refusal to acknowledge my
 7 remedy. That remedy is my Constitutional and Civil Right that
 8 protects me from an abusive state known as the State of California
 9

10 113 Petition at 7; 114 Petition at 7; 116 Petition at 10. And third, in case
 11 number SACV 17-00116-JLS (DFM), Petitioner contends that his
 12 “Constitutional and Civil Rights” were violated in case number BA442610
 13 when court proceedings continued after the judge “accepted” Petitioner’s
 14 “Reservation of Rights” and “order[ed] a jurisdictional challenge hearing” but
 15 the hearing was never held. 116 Petition at 7.

16 Those three claims, which attempt to challenge Petitioner’s convictions
 17 through the operation of a model civil commercial statute, are legally frivolous.
 18 Under 28 U.S.C. § 2254(a), a claim is cognizable in federal habeas corpus
 19 proceedings only if it alleges a violation of the Constitution, federal law, or
 20 treaties of the United States. The UCC is not a federal law and it has no
 21 application to a criminal conviction. Harris v. Wands, 410 F. App’x 145, 147
 22 (10th Cir. 2011) (affirming dismissal of federal prisoner’s habeas petition
 23 because his “use of commercial law theories based on the U.C.C. to attack the
 24 execution of his criminal sentence simply has no foundation in our laws”);
 25 Brzezinski v. Smith, No. 12-14573, 2013 WL 2397522, at *3 (E.D. Mich. May
 26 31, 2013) (“The UCC speaks only to commercial law and does not provide a
 27 proper basis for appealing a criminal conviction, writing a habeas petition, or
 28 bringing a civil rights action.”); Crawford v. U.S. Bureau of Prisons, No. 10-

3108, 2010 WL 2671986, at *1, n.4 (D. Kan. June 30, 2010) (“The [UCC] is not relevant to petitioner’s federal conviction, and is not itself federal law.”). As such, Petitioner’s three claims premised on the UCC must be dismissed under Rule 4. See Caldwell v. North Carolina, No. 13-327, 2013 WL 3148630, at *1 (W.D.N.C. June 19, 2013) (dismissing § 2254 petition as frivolous in part because “[p]etitioner cites to the [UCC] . . . in his petition, but the UCC simply does not provide for his release from custody” because “its provisions are wholly inapplicable to criminal judgments”); see also United States v. Sykes, 614 F.3d 303, 306 n.2 (7th Cir. 2010) (characterizing the defendant’s argument that the UCC relieved him of criminal liability as “bizarre”).

Petitioner’s fourth claim, raised only in case number SACV 17-00116-JLS (DFM), is that his “Constitutional and Civil Rights” were violated in case number BA442610 when the state court “continued to proceed” against him “after jurisdiction was removed to Federal Court.” 116 Petition at 5.

Specifically, Petitioner states that

In February 2016 I discovered that there was a case and an arrest warrant issued against me and [my] co-defendant On 2/23/16 federal removal Case #2:16-cr-00094 SJO [was] filed. We attempted three times to have the state court clerk accept the NOTICE TO ADVERSE PARTY OF REMOVAL OF CRIMINAL ACTION and they refused to accept the NOTICE. We then filed by US Mail and the court received it on 3/3/16. On 3/4/16 the case was called and the state court denied the removal and denied the request to recall the arrest warrants. On March 10, 2016 the case was remanded back to the state court.

116 Petition at 5.

This claim is also frivolous. As an initial matter, Petitioner fails to explain how the state court’s “denial” of his attempted removal violated the

1 Constitution or any federal law. Moreover, Petitioner attempted to remove the
2 state-court action based on a meritless argument that the state court lacked
3 jurisdiction over him because he had made an “explicit valid reservation of
4 rights upon [his] California Driver’s License[]” under UCC 1-308. See Notice
5 of Removal at 2, 4, California v. Blair Christopher Hanloh et al., No. 16-
6 00094-SJO (C.D. Cal. Feb. 23, 2016), Dkt. 1. This is not one of the narrow and
7 limited grounds upon which a state prosecution can be removed to federal
8 court. See 28 U.S.C. §§ 1242-43; Hallal v. Mardel, No. 16-01432, 2016 WL
9 6494411, at *2 (E.D. Cal. Nov. 2, 2016) (discussing grounds for removal of
10 state prosecutions). Moreover, nothing prevented the state court from
11 proceeding with Petitioner’s criminal prosecution after that notice of removal
12 was filed. See 28 U.S.C. 1455(b)(3) (stating that filing of notice of removal of
13 criminal prosecution “shall not prevent the State court in which such
14 prosecution is pending from proceeding further, except that a judgment of
15 conviction shall not be entered unless the prosecution is first remanded”). And
16 in any event, this Court ultimately denied removal and remanded the case back
17 to state court because Petitioner “fail[ed] to allege a federal cause of action that
18 would be grounds for removal.” Hanloh, No. 16-00094-SJO (C.D. Cal. Mar.
19 10, 2016), Dkt. 4 (minute order). Because Petitioner clearly is not entitled to
20 habeas relief on this claim, it must also be dismissed under Rule 4.

21 III.

22 CONCLUSION

23 IT THEREFORE IS ORDERED that on or before March 1, 2017,
24 Petitioner must show cause in writing as to (1) why his petitions in SACV 17-
25 00113-JLS (DFM) and SACV 17-00114-JLS (DFM) should not be dismissed
26 for lack of jurisdiction because he was not “in custody” when they were filed
27 and (2) why his petitions in SACV 17-00113-JLS (DFM), SACV 17-00114-JLS
28 (DFM), and SACV 17-00116-JLS (DFM) should not be dismissed under Rule

1 4 because they fail to state a nonfrivolous claim. As to the petition in SACV
2 17-00116-JLS (DFM), Petitioner must clarify whether he received a term of
3 probation in that case and when it expired or is set to expire.

4 Petitioner is admonished that if he fails to file a timely response to this
5 Order, his petitions may be dismissed for failure to prosecute and/or for the
6 reasons stated above.

7
8
9
10 Dated: February 6, 2017

A handwritten signature in black ink, appearing to read 'Douglas F. McCormick', written over a horizontal line.

DOUGLAS F. McCORMICK
United States Magistrate Judge